

# Exhibit 5

August 23, 2003

C&S Acquisition LLC  
C&S Wholesale Grocers, Inc.  
47 Old Ferry Road  
Brattleboro, Vermont 05302  
Attn: General Counsel


Ladies and Gentlemen:

The undersigned hereby acknowledge that you and certain of your affiliates have been named as defendants in a lawsuit brought by the plaintiff Wayne Berry (the "Berry Lawsuit") involving the alleged infringement of a protected software program in the United States District Court of Hawaii under the caption Wayne Barry vs. Hawaiian Express Services, Inc. et al (civ nocv-300385 SOM-LEK) (the "Berry Technology"). The undersigned hereby acknowledge and agree that any claims, losses or liability suffered by you, your affiliates or any of your or your affiliates, respective directors, officers, employees, advisors, representatives and agents resulting from any past, present or future use of the Berry Technology, will be considered an Excluded Liability, as such term is defined under that Asset Purchase Agreement dated July 7, 2003, by and among you and the undersigned (the "Agreement"), and that you shall be entitled to indemnification from the undersigned pursuant to and subject to the limitations of Article XIII of the Agreement, including Section 13.3(g). The undersigned hereby assume the defense of the Berry Litigation, as contemplated by and subject to the limitations of Article XIII of the Agreement (including Section 13.3(g)).

Nothing in the this letter shall constitute an admission by the undersigned that the Berry Lawsuit constitutes a breach of any of their representations and warranties contained in the Agreement and the undersigned preserves its right to contest any claims that such Berry Lawsuit constitutes a breach of any of such representations and warranties. Further, the undersigned acknowledge that you preserve all rights to assert that the Berry Lawsuit constitutes a breach of the undersigneds' representations and warranties contained in the Agreement.

Very truly yours,

THE FLEMING COMPANIES, INC.  
FLEMING TRANSPORTATION SERVICE, INC.  
FLEMING INTERNATIONAL LTD.  
PIGGLY WIGGLY COMPANY  
RFS MARKETING SERVICES, INC.  
FLEMING FOODS OF TEXAS L.P.  
FLEMING FOODS MANAGEMENT CO., L.L.C.  
ABCO FOOD GROUP, INC.  
ABCO MARKETS, INC.  
ABCO REALTY CORP.


  
By: \_\_\_\_\_  
Authorized Signatory

ACCEPTED AND AGREED:

C&S ACQUISITION LLC

  
By: Mark Gross  
Its: Executive Vice President

C&S WHOLESALE GROCERS, INC.

  
By: Mark Gross  
Its: Executive Vice President